

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN BONILLA, et al.,

Case No.: 14-1990 CW (PR)

Plaintiffs,

v.

JEFFREY BEARD, Director of
California Department of
Corrections and Rehabilitation,

Defendant.

STEVEN BONILLA, et al.,

Case No.: 14-2091 CW (PR)

Plaintiffs,

v.

JEFFREY BEARD, Director of
California Department of
Corrections and Rehabilitation,

Defendant.

ORDER DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS; DISMISSING
ACTIONS; TERMINATING ALL
PENDING MOTIONS

Plaintiff Steven Bonilla, a state prisoner incarcerated at San Quentin State Prison (SQSP) and a frequent litigator in this Court, has filed these two pro se civil actions on behalf of himself and other inmates at SQSP. After he filed both actions, Bonilla filed documents stating that he wants to dismiss the claims of all other Plaintiffs and to proceed only on behalf of himself. In case number C 14-2091 CW (PR), many of the individuals listed as Plaintiffs filed letters explaining that Bonilla used their names without their permission and requesting that their claims be dismissed from the action. For good cause appearing, except for Bonilla, the Court dismisses the claims of all individuals named as Plaintiffs in these actions. The Clerk of the Court shall not charge these individuals a filing fee.

1 Before the Court reviews the complaints, it addresses a
2 preliminary matter. In each case, Bonilla files a document
3 entitled, "Peremptory Challenges," in which he seeks to recuse the
4 undersigned judge on the grounds of alleged prejudice against him.
5 Because these documents do not satisfy the requirements for
6 recusal of a judge listed in 28 U.S.C. § 144 or 28 U.S.C. § 455,
7 the requests for recusal are denied.

8 In case number C 14-2091 CW (PR), Bonilla has filed a motion
9 to proceed in forma pauperis (IFP). In case number C 14-1990 CW
10 (PR), Bonilla has not filed a motion to proceed IFP, although the
11 Clerk has sent him a notice that he must do so or his complaint
12 will be dismissed. Both of these actions are petitions for writs
13 of mandate in which Plaintiff Bonilla challenges operational
14 procedure (OP) 608, newly implemented by the California Department
15 of Corrections and Rehabilitations (CDCR) for Grade A condemned
16 inmates at SQSP. For the following reasons, both of these actions
17 must be dismissed.

18 On October 25, 2011, the Court informed Bonilla that, in
19 accordance with 28 U.S.C. § 1915(g), he no longer qualifies to
20 proceed IFP in any civil action he files in this Court. See In re
21 Steven Bonilla, Nos. C 11-3180, et seq. CW (PR), Order of Dismissal
22 at 6:23-7:19. The sole exception to this restriction is that
23 Bonilla may proceed IFP if he "is under imminent danger of serious
24 physical injury." 28 U.S.C. § 1915(g). The plain language of the
25 imminent danger clause in § 1915(g) indicates that "imminent
26 danger" is to be assessed at the time of filing of the complaint.
27 Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).

28 In these actions, Plaintiff Bonilla has not alleged facts

1 that show he was in imminent danger of serious physical injury at
2 the time he filed them. In C 14-1990 CW (PR), Plaintiff Bonilla
3 challenges OP 608 on the ground that it requires condemned
4 inmates, such as himself, to be subject to new housing
5 requirements, which he fails to specify. In C 14-2041 CW (PR),
6 Plaintiff Bonilla challenges OP 608 on the ground that it requires
7 Grade A condemned inmates to be escorted by at least one
8 correctional officer and to be in restraints while under escort.
9 Neither of Plaintiff Bonilla's grounds for challenging OP 608
10 places him in imminent danger of serious physical injury.
11 Therefore, these actions must be dismissed under 28 U.S.C.
12 § 1915(g).

13 These actions also must be dismissed because this Court lacks
14 authority to issue a writ of mandamus to direct state officials in
15 the performance of their duties; a petition for a writ of mandamus
16 compelling a state official to take or refrain from taking some
17 action is frivolous as a matter of law. Demos v. United States
18 Dist. Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991).

19 CONCLUSION

20 Based on the foregoing, the Court orders as follows:

21 1. With the exception of Plaintiff Bonilla, the claims of all
22 named Plaintiffs are dismissed from these actions and the Clerk of
23 the Court shall not charge them a filing fee.

24 2. Plaintiff Bonilla's requests for recusal are denied.

25 3. Plaintiff Bonilla's request to proceed IFP in case number
26 C 14-2014 CW (PR) is DENIED and both actions are DISMISSED. Each
27 action is without legal merit.

28 4. The Clerk of the Court shall terminate all pending

1 motions, enter judgment and close the files.

2 5. The Clerk shall file a copy of this Order in C 08-0471 CW.

3 IT IS SO ORDERED.

4 Dated: 6/2/2014

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6 CLAUDIA WILKEN
7 UNITED STATES DISTRICT JUDGE
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United States District Court
For the Northern District of California